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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,858	12/05/2001	Arumugam Manthiram	05670P004	7142
7590	06/03/2005		EXAMINER	
Edwin S. Flores 12700 Park Central Suite 455 Dallas, TX 75251				MARTIN, ANGELA J
		ART UNIT		PAPER NUMBER
		1745		

DATE MAILED: 06/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/010,858	MANTHIRAM ET AL.
	Examiner	Art Unit
	Angela J. Martin	1745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 17 March 2005.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-3 and 5-30 is/are pending in the application.

4a) Of the above claim(s) 5,7-11,14-24 and 26-29 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-3, 6, 12, 13, 25, 30 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. _____.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____

DETAILED ACTION

This Office Action is responsive to the Amendment filed on March 17, 2005. The Applicant has withdrawn claims 10, 18, 20; and has amended claims 13 and 30. However, this rejection is made final for the following reasons of record.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 1-3, 6, 12, 13 are rejected under 35 U.S.C. 102(a) as being anticipated by Park et al., J. Electrochem. Society.

Rejection of claims 1-3, 6, 12, 13 drawn to an electrode material.

Park et al., teach an electrode material comprising a surface/chemically modified positive electrode (cathode) material, wherein the modification is ceramic (abstract). It teaches the composition wherein the modification is $\text{Li}_x\text{Ni}_{1-y}\text{Co}_y\text{O}_2$, when $x=1$ and $y=1$ (LiCoO_2) (abstract) and the positive electrode material is LiMn_2O_4 (abstract). It teaches the modification is $\text{Li}_x\text{Ni}_{1-y}\text{Co}_y\text{O}_2$, when $x=1$ and $y=1$ (LiCoO_2)(abstract).

Thus, the claims are anticipated.

3. Claims 25 and 30 rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Park et al., J. Electrochem. Society.

Rejection of claims 25 and 30 drawn to an electrode material.

Park et al., teach an electrode material comprising a surface/chemically modified LiMn₂O₄ spinel oxide (abstract). Claims 25 and 30 are product-by-process claims. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

Thus, the claims are anticipated.

However, if the claim is not anticipated, in the alternative, it is obvious because Park et al., teach the same product as in the Application.

Response to Arguments

4. Applicant's arguments filed March 17, 2005 have been fully considered but they are not persuasive. Applicant argues that the LiCoO₂ coating was "coated onto the electrode" but "the present invention is an electrode material including a surface/chemically modified positive electrode (cathode) material..." However, the claims presented are product claims, not method claims. It appears that the product of the prior art is the same as the product of the application, even if the methods of attaining the electrode material are different. The term "surface/chemically modified", as written, can be defined as "surface modified", which is what a coating is on the surface of an electrode.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Angela J. Martin whose telephone number is 571-272-1288. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AJM


PATRICK JOSEPH RYAN
SUPERVISORY PATENT EXAMINER